MOTION FILED
APR 29 1991

No. 90-1530

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

PAN AM CORPORATION, et al.,
Petitioners,

v.

SECTION 1110 PARTIES, et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION FOR LEAVE TO FILE AND BRIEF AMICUS CURIAE OF AMERICAN ASSOCIATION OF EQUIPMENT LESSORS SUPPORTING RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

BENNETT BOSKEY
(Counsel of Record)
ELLIS LYONS
EDWARD A. GROOBERT
MORRIS KLEIN
VOLPE, BOSKEY AND LYONS
918 16th Street, N.W., Suite #602
Washington, D.C. 20006
(202) 737-6580

Attorneys for American Association of Equipment Lessors

April 29, 1991

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF AMERICAN ASSOCIATION OF EQUIPMENT LESSORS SUPPORTING RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

The American Association of Equipment Lessors ("AAEL") hereby moves for leave to file the annexed Brief Amicus Curiae Of American Association Of Equipment Lessors Supporting Respondents In Opposition To Petition For Certiorari. AAEL's interest is set forth in the annexed Brief Amicus Curiae. Written consent has been obtained from the petitioners and is being lodged with the Clerk. Written consents have been obtained from counsel for a substantial number of the respondents and are being lodged with the Clerk. However, in view of the large number of respondents, consents have not been received on behalf of all of them (though none has been refused) as of the time this motion and annexed brief are being prepared for filing, and, hence, as a precaution, this motion is accompanying the brief.

Respectfully submitted,

BENNETT BOSKEY
(Counsel of Record)
ELLIS LYONS
EDWARD A. GROOBERT
MORRIS KLEIN
VOLPE, BOSKEY AND LYONS
918 16th Street, N.W., Suite #602
Washington, D.C. 20006
(202) 737-6580

Attorneys for American Association of Equipment Lessors

April 29, 1991

No. 90-1530

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

PAN AM CORPORATION, et al.,

Petitioners,

v.

SECTION 1110 PARTIES, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF AMICUS CURIAE OF AMERICAN ASSOCIATION OF EQUIPMENT LESSORS SUPPORTING RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

BENNETT BOSKEY
(Counsel of Record)
ELLIS LYONS
EDWARD A. GROOBERT
MORRIS KLEIN
VOLPE, BOSKEY AND LYONS
918 16th Street, N.W., Suite #602
Washington, D.C. 20006
(202) 737-6580

Attorneys for American Association of Equipment Lessors

April 29, 1991

TABLE OF CONTENTS

	Page
INTEREST OF AAEL	2
REASONS FOR NOT GRANTING CERTIORARI	4
CONCLUSION	6

TABLE OF AUTHORITIES

	Page
Cases:	
In re Braniff, Inc., 110 B.R. 980 (Bank. M.D. Fla. 1990)	4
In re Continental Airlines, Inc., et al., Debtors, (U.S.D.C. District of Delaware, No. 91-58, decided March 26, 1991), on appeal to United States Court of Appeals for the Third Circuit, No. 91-3204	4
Statute:	
Section 1110 of the Bankruptcy Code, 11 U.S.C. § 1110	*passim*
Other:	
U.S. Department of Commerce, "1991 U.S. Industrial Outlook" (January 1991)	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-1530

PAN AM CORPORATION, et al.,

Petitioners,

v.

SECTION 1110 PARTIES, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

BRIEF AMICUS CURIAE OF AMERICAN ASSOCIATION OF EQUIPMENT LESSORS SUPPORTING RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

The American Association of Equipment Lessors (AAEL), as amicus curiae, does not doubt that the question of law under Section 1110 of the Bankruptcy Code presented by the petition for certiorari is a question having importance. But in AAEL's view, it is not important that this question, which has been correctly disposed of by the three courts below, be given still further appellate review—at least in the absence of a conflict of Circuits, which has not occurred and

which there is no reason to think is likely to occur. Accordingly, AAEL strongly urges that Pan Am's petition for certiorari be denied.

INTEREST OF AAEL

AAEL is the major national trade association in the multi-billion dollar equipment leasing industry, with about 900 member companies, located throughout the United States and in foreign countries, engaged in every aspect of leasing equipment to business, commercial, governmental and agricultural organizations.

According to the Department of Commerce, the volume of equipment leasing in this country, as measured by original cost of the equipment, was $132.0 billion in 1990, and is projected to be $143.7 billion in 1991.[1] AAEL estimates that AAEL's members account for over two-thirds of this volume.

Equipment leasing represents well over 30 percent of all capital investment in the United States each year. Second only to the commercial paper/bond market, leasing is the next largest source of investment capital for business, industry and agriculture in our economy. Equipment is also leased to federal, state and local governmental agencies for a variety of important public uses.[2]

---

[1] U.S. Department of Commerce, "1991 U.S. Industrial Outlook" (January 1991) at 51-1.

[2] Equipment leasing is utilized by, and helps to fuel the economic growth and productivity of, virtually every segment of our economy. The types of equipment leased for business purposes include agricultural; aircraft; automobiles; computers; construction; container and intermodal equipment; electrical power

AAEL estimates that approximately 130 of its members engage in the leasing of aircraft to certificated carriers and others. A very substantial portion of these leases are sale-leaseback arrangements which would be adversely affected in major ways if Pan Am's position were to prevail. This led AAEL to make submissions as amicus curiae in the courts below opposing Pan Am on the merits. It is AAEL's understanding that the sale-leaseback is the dominant form of aircraft leasing transaction employed in the United States airline industry—with respect to both newly-acquired aircraft and previously-acquired aircraft.

As the national trade association for equipment leasing companies, AAEL is vitally interested in matters which affect the industry. The applicability of Section 1110 of the Bankruptcy Code to sale-leaseback transactions—and particularly to "non-acquisition" sale-leaseback transactions—is an issue which has profound effects not only on AAEL's members but also on the ability of airlines to obtain needed aircraft and financing and hence, in a much larger sense, on the public interest. From its national perspective, AAEL is in a position to help the Court assess the strong reasons why further appellate review of this issue through a grant of certiorari is not called for.

---

generation; furniture and fixtures; industrial; manufacturing; materials handling; medical; office machines; pollution control and environmental; railroad rolling stock; telecommunications; trucks and trailers; and vessels. Equipment leasing is one of the major methods by which American businesses acquire the capital equipment and financing needed to succeed in today's highly competitive domestic and international markets.

REASONS FOR NOT GRANTING CERTIORARI

In summary form, in addition to the points being made by others, the points to which AAEL especially invites attention, in opposition to Pan Am's petition for certiorari, are these:

1. No conflict of decisions exists. This case has been decided unanimously against Pan Am by the Bankruptcy Judge, by the District Court, and by a unanimous Court of Appeals. Moreover, in the Continental Airlines bankruptcy originating in the District of Delaware, a contrary decision by a Bankruptcy Judge in the District of Delaware was promptly reversed by the District Court there in a well-reasoned opinion which fully accords with the decisions here. *In re Continental Airlines, Inc. et al., Debtors*, Cases Nos. 90-932 through 90-984, Civil Action No. 91-58, decided March 26, 1991. Continental has taken the decision on appeal to the Third Circuit (No. 91-3204). The appeal is scheduled to be argued in the Third Circuit on May 1, 1991, but there is no reason to suppose the District Court will be reversed. The only other decision directly in point, by the Bankruptcy Court in the Middle District of Florida, is likewise in accord. *In re Braniff, Inc.*, 110 B.R. 980 (Bankr. M.D.Fla. 1990). Thus, the law has been firming up on a uniform basis and can be expected to become correctly settled without any need—or indeed any occasion—for intervention by this Court. In this connection, it should be noted that Pan Am's petition for certiorari (p. 12) acknowledges that:

> "The Court is unlikely to benefit from further review of this issue by the lower courts. A consensus has clearly developed contrary

> to the position we advocate on this appeal, including comprehensive opinions by district courts acting as appellate courts in the Second and Third Circuits. The Court of Appeals below obviously thought the issue was sufficiently settled that it did not even choose to write an opinion."

2. The opinions which have been rendered are careful and convincing as well as correct. Not only are the opinions "comprehensive" as Pan Am has acknowledged; they also deal with the issues meticulously and definitively. Every argument by which Pan Am has made a futile effort to distill something out of the legislative history and the structure of the statute has been presented by Pan Am below and has been found, with total justification, to be without legal merit. Further appellate review is not called for.

3. The granting of certiorari would deprive the lessors, in substantial measure, of the speedy and effective remedy which Section 1110 of the Bankruptcy Code by its plain language provides to them. Pan Am's efforts to postpone the inevitable would, if successful, defeat the central purpose of Section 1110. The delay arising out of carrying this case over the Court's summer recess would inflict irreparable injury on lessors and would impose an ill-advised period of new uncertainties on airline financing generally.

4. Thus the granting of certiorari—unless accompanied by a summary affirmance—would adversely affect the public interest by injecting needless substantial uncertainty with respect to both the availability and the cost of airline financing. It must be expected that this would (i) increase the difficulties of the already severely-troubled airline industry; (ii)

raise the costs of airline operation in ways that would threaten to increase air fares substantially, and (iii) increase the risks to the public safety by jeopardizing airline stability even further.

CONCLUSION

For the foregoing reasons, as well as those being specified by others opposing Pan Am's petition for certiorari, certiorari should be denied.

Respectfully submitted,

BENNETT BOSKEY
(Counsel of Record)
ELLIS LYONS
EDWARD A. GROOBERT
MORRIS KLEIN
VOLPE, BOSKEY AND LYONS
918 16th Street, N.W., Suite #602
Washington, D.C. 20006
(202) 737-6580

Attorneys for American Association of Equipment Lessors

April 29, 1991